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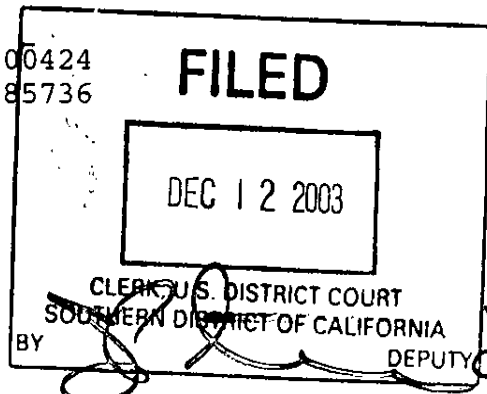
3:03-CV-02502 PINNOCK V. MANTIC ASHANTIS

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

MANTIC ASHANTI'S CAUSE, SUING
ON BEHALF OF THEODORE A.
PINNOCK AND ITS MEMBERS; and
THEODORE A. PINNOCK, An
Individual,

Case No.: '03 CV 2502 L' (LSP)

CIVIL COMPLAINT:
DISCRIMINATORY PRACTICES IN
PUBLIC ACCOMMODATIONS
[42 U.S.C. 12182(a) ET. SEQ;
CIVIL CODE 51, 52, 54, 54.1]

Plaintiffs,

NEGLIGENCE
[CIVIL CODE 1714(a), 2338,
3333; EVIDENCE CODE 669(a)]

v.

DEMAND FOR JURY TRIAL
[F.R.Civ.P. rule 38(b);
Civ.L.R. 38.1]

CHILI'S GRILL & BAR - CAMINO
DEL RIO NORTH, SAN DIEGO,
a.k.a. CHILI'S HAMBURGER
GRILL AND BAR - CAMINO DEL
RIO NORTH, SAN DIEGO; BRINKER
INTERNATIONAL; BRINKER
RESTAURANT CORPORATION;
CHARMAINE C. WILLIS;
And

DOES 1 THROUGH 10, Inclusive
Defendants.

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE
A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,

1 herein complain, by filing this Civil Complaint in accordance with
2 rule 8 of the Federal Rules of Civil Procedure in the Judicial
3 District of the United States District Court of the Southern
4 District of California, that Defendants have in the past, and
5 presently are, engaging in discriminatory practices against
6 individuals with disabilities, specifically including minorities
7 with disabilities. Plaintiffs allege this civil action and others
8 substantial similar thereto are necessary to compel access
9 compliance because empirical research on the effectiveness of
10 Title III of the Americans with Disabilities Act indicates this
11 Title has failed to achieve full and equal access simply by the
12 executive branch of the Federal Government funding and promoting
13 voluntary compliance efforts. Further, empirical research shows
14 when individuals with disabilities give actual notice of potential
15 access problems to places of public accommodation without a
16 federal civil rights action, the public accommodations do not
17 remove the access barriers. Therefore, Plaintiffs make the
18 following allegations in this federal civil rights action:

19
20 **JURISDICTION AND VENUE**

21 1. The federal jurisdiction of this action is based on the
22 Americans with Disabilities Act, 42 United States Code 12101-
23 12102, 12181-12183 and 12201, et seq. Venue in the Judicial
24 District of the United States District Court of the Southern
25 District of California is in accordance with 28 U.S.C. § 1391(b)
26 because a substantial part of Plaintiffs' claims arose within the
27 Judicial District of the United States District Court of the
28 Southern District of California.

SUPPLEMENTAL JURISDICTION

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2. The Judicial District of the United States District Court of the Southern District of California has supplemental jurisdiction over the state claims as alleged in this Complaint pursuant to 28 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper in this action is because all the causes of action or claims derived from federal law and those arising under state law, as herein alleged, arose from common nucleus of operative facts. The common nucleus of operative facts, include, but are not limited to, the incidents where Plaintiff's Member Theodore A. Pinnock was denied full and equal access to Defendants' facilities, goods, and/or services in violation of both federal and state laws when they attempted to enter, use, and/or exit Defendants' facilities as described below within this Complaint. Further, due to this denial of full and equal access, Theodore A. Pinnock and other persons with disabilities were injured. Based upon the said allegations, the state actions, as stated herein, are so related to the federal actions that they form part of the same case or controversy and the actions would ordinarily be expected to be tried in one judicial proceeding.

NAMED DEFENDANTS AND NAMED PLAINTIFFS

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3. Defendants are, and, at all times mentioned herein, were, a business or corporation or franchise organized and existing and/or doing business under the laws of the State of California. Defendant CHILI'S GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO is located at 4252 Camino Del Rio N, San Diego, California,

1 92108. Plaintiffs are informed and believe and thereon allege
2 that Defendants BRINKER INTERNATIONAL and/or BRINKER RESTURANT
3 CORPORATION, is the owner, operator, and/or doing business as
4 CHILI'S GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a.
5 CHILI'S HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO.

6 Defendant BRINKER RESTURANT CORPORATION is located at 6820 LBJ
7 Freeway, Dallas, Texas 75240. Plaintiffs are informed and believe
8 and thereon allege that Defendant CHARMAINE C. WILLIS, is the
9 owner, operator, and/or lessor of the property located at 4242
10 Camino Del Rio N, San Diego, California, 92108, Assessor Parcel
11 Number 461-300-16-00, 461-330-18-00 and 461-300-19-00. Plaintiffs
12 are informed and believe and thereon allege that address 4252
13 Camino Del Rio N, San Diego, California 92108 is included in the
14 above stated Assessor Parcel 461-300-16-00, 461-300-18-00 and/or
15 Assessor Parcel 461-300-19-00. Defendant CHARMAINE C WILLIS, is
16 located at 2552 Caminito Viejo, La Jolla, California, 92037. The
17 words Plaintiffs" and "Plaintiff's Member" as used herein
18 specifically include the organization MANTIC ASHANTI'S CAUSE, its
19 Members, its member Theodore A. Pinnock and persons associated
20 with its Members who accompanied Members to Defendants'
21 facilities, as well as THEODORE A. PINNOCK, An Individual.

22 4. Defendants Does 1 through 10, were at all times relevant
23 herein subsidiaries, employers, employees, agents, of CHILI'S
24 GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S
25 HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO; BRINKER
26 INTERNATIONAL; BRINKER RESTAURANT CORPORATION; CHARMAINE C.
27 WILLIS. Plaintiffs are ignorant of the true names and capacities
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1 of Defendants sued herein as Does 1 through 10, inclusive, and
2 therefore sues these Defendants by such fictitious names.

3 Plaintiffs will pray leave of the court to amend this complaint to
4 allege the true names and capacities of the Does when ascertained.

5 5. Plaintiffs are informed and believe, and thereon allege, that
6 Defendants and each of them herein were, at all times relevant to
7 the action, the owner, lessor, lessee, franchiser, franchisee,
8 general partner, limited partner, agent, employee, representing
9 partner, or joint venturer of the remaining Defendants and were
10 acting within the course and scope of that relationship.

11 Plaintiffs are further informed and believe, and thereon allege,
12 that each of the Defendants herein gave consent to, ratified,
13 and/or authorized the acts alleged herein to each of the remaining
14 Defendants.

15 CONCISE SET OF FACTS

16 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that
17 advocates on the behalf of its members with disabilities when
18 their civil rights and liberties have been violated. Plaintiff's
19 member THEODORE A. PINNOCK is a member of Plaintiff Organization
20 and has an impairment in that he has Cerebral Palsy and due to
21 this impairment he has learned to successfully operate a
22 wheelchair.

23 7. On or about August 1, 2003, Plaintiff's member THEODORE A.
24 PINNOCK went to Defendants' CHILI'S GRILL & BAR - CAMINO DEL RIO
25 NORTH, SAN DIEGO, a.k.a. CHILI'S HAMBURGER GRILL AND BAR - CAMINO
26 DEL RIO NORTH, SAN DIEGO facilities to utilize their goods and/or
27 services. When Plaintiff's member patronized Defendants' CHILI'S
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1 GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S
2 HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO
3 facilities, he was unable to use and/or had difficulty using the
4 public accommodations' disabled parking, access ramp, entrance,
5 bar area seating, bar counter, main dining area seating, interior
6 path of travel, and restroom facilities at Defendants' business
7 establishment because they failed to comply with ADA Access
8 Guidelines For Buildings and Facilities (hereafter referred to as
9 "ADAAG") and/or California's Title 24 Building Code Requirements.
10 Defendants failed to remove access barriers within the entrance,
11 bar area seating, bar counter, main dining area seating, interior
12 path of travel, and restroom facilities of Defendants' CHILI'S
13 GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S
14 HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO
15 establishment.

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17 8. Plaintiff's member personally experienced difficulty with
18 said access barriers at Defendants' CHILI'S GRILL & BAR - CAMINO
19 DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S HAMBURGER GRILL AND BAR -
20 CAMINO DEL RIO NORTH, SAN DIEGO facilities. For example, the
21 parking facilities of Defendants' establishment are inaccessible.
22 The parking facility has sixty-two (62) parking spaces, two (2) of
23 which are designated as disabled parking spaces. The two (2)
24 existing disabled parking spaces are inaccessible as they are only
25 fifteen feet (15') long and the disability color markings are
26 badly faded. Also a ramp impermissibly encroaches into the access
27 aisle of the existing disabled parking space. A compliant
28 "regular" disabled parking space is at least eighteen feet (18')

1 long with proper markings on the parking stall/access aisle and
2 without encroachment of a ramp into the access aisle. This
3 parking facility is required to have a total of three (3)
4 designated disabled parking spaces, one of which must be a
5 compliant "van accessible" disabled parking space and the other
6 two (2) required disabled parking spaces must be compliant
7 "regular" disabled parking spaces. A compliant "van accessible"
8 disabled parking space is at least eighteen feet (18') long with
9 an access aisle that is eight feet (8') wide. The parking
10 facility at Defendants' CHILI'S GRILL & BAR - CAMINO DEL RIO
11 NORTH, SAN DIEGO, a.k.a. CHILI'S HAMBURGER GRILL AND BAR - CAMINO
12 DEL RIO NORTH, SAN DIEGO establishment fails to have the required
13 "van accessible" parking space and also fails to have two (2)
14 compliant "regular" disabled parking spaces.

15 9. The front entrance to Defendants establishment is not
16 accessible. The access ramp leading to the entrance of the
17 restaurant, fails to be accessible, as it has only one (1)
18 handrail. A ramp with a slope of 5%-8.33% is required to have two
19 (2) handrails. The front entrance door is inaccessible, as it
20 requires ten pounds (10 lbs.) of pressure to operate. The main
21 entrance door is inaccessible, as it requires eleven pounds (11
22 lbs.) of pressure to operate. Outside doors like the front
23 entrance door and the main entrance door are not to exceed the
24 maximum required pressure of eight and a half pounds (8 ½ lbs.) to
25 operate. The entrance to the restaurant fails to have the
26 required disability signage.

27 10. The interior path of travel within the restaurant fails to be
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1 accessible, as the interior path of travel narrows to a mere
2 thirty inches (30") in some areas. The interior path of travel is
3 required to be a minimum of thirty-six inches (36") in width.

4 11. The cashier counter/bar is inaccessible. The height of the
5 cashier counter/bar exceeds the maximum allowable height of
6 thirty-four inches (34"). The minimum requirement is that there
7 be at least a three-foot (3') section that is no higher than
8 thirty-four inches (34").

9 12. The seating inside the Defendants' establishment is
10 inaccessible. The seating inside the main dining area is
11 inaccessible because the main dining area fails to have a
12 sufficient number of the required accessible seats. There are one
13 hundred and forty (140) seats located inside the main dining area,
14 five (5) of which are accessible. The five (5) accessible seats
15 fail to be designated as accessible seating. Further, the main
16 dining area must meet the requirement that five percent (5%) of
17 all of its seats have a knee clearance depth of nineteen inches
18 (19") a width of thirty inches (30") and a height of twenty-seven
19 inches (27") minimum, which in this case requires seven (7) seats
20 to be designated as accessible. The seating in the bar area is
21 also inaccessible because the bar area fails to have to have any
22 of the required accessible seats. There are forty (40) seats
23 located in the bar area. Twenty-four (24) of the forty (40) seats
24 have a knee clearance depth of only five inches (5"), ten of the
25 forty (40) seats have a five inch (5") step up, and the other six
26 (6) seats have a table height of forty five inches (45"). These
27 seats fail to meet the requirement that five percent (5%) of all
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1 of its seats have a knee clearance depth of nineteen inches (19")
2 a width of thirty inches (30") and a height of twenty-seven inches
3 (27") minimum, which in this case requires two (2) seats to be
4 designated as accessible.

5 13. The Men's restroom at the Defendants' establishment is
6 inaccessible. The entrance door requires too much pressure to
7 operate, as it requires seven pounds (7 lbs.) of pressure to open.
8 The maximum requirement for an inside door like this one is five
9 pounds (5lbs.) of pressure. The strike clearance of the restroom
10 door is a mere six inches (6") and fails to meet the minimum width
11 requirement of eighteen inches (18"). As a result of these
12 violations of the Americans With Disabilities Act and/or Title 24
13 of the California Building Code, Plaintiff's Member and Plaintiff
14 THEODORE A. PINNOCK was unable to maneuver his wheelchair into the
15 men's restroom. The width of the clear floor space in front of
16 the urinal is only twenty-nine inches (29") when it should be at
17 least the required thirty inches (30"). The stall fails to have
18 the required handles on both sides of the door. The diaper
19 changing counter is inaccessible, as it is forty-five inches (45")
20 high. The diaper changing counter exceeds the maximum allowable
21 height of thirty-four inches (34"). The hot water and drainpipes
22 under the lavatory fail to have the required insulation. The
23 restroom also fails to have the required audible visual alarm
24 system.

25
26 14. Pursuant to federal and state law, Defendants are required to
27 remove barriers to their existing facilities. Further, Defendants
28 had actual knowledge of their barrier removal duties under the

1 Americans with Disabilities Act and the Civil Code before January
2 26, 1992. Also, Defendants should have known that individuals
3 with disabilities are not required to give notice to a
4 governmental agency before filing suit alleging Defendants failed
5 to remove architectural barriers.

6 15. Plaintiffs believe and herein allege Defendants' facilities
7 have access violations not directly experienced by Plaintiff's
8 Member which preclude or limit access by others with disabilities,
9 including, but not limited to, Space Allowance and Reach Ranges,
10 Accessible Route, Protruding Objects, Ground and Floor Surfaces,
11 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,
12 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,
13 Entrances, Drinking Fountains and Water Coolers, Water Closets,
14 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,
15 Handrails, Grab Bars, and Controls and Operating Mechanisms,
16 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,
17 Plaintiffs allege Defendants are required to remove all
18 architectural barriers, known or unknown. Also, Plaintiffs allege
19 Defendants are required to utilize the ADA checklist for Readily
20 Achievable Barrier Removal approved by the United States
21 Department of Justice and created by Adaptive Environments.

22 16. Based on these facts, Plaintiffs allege Plaintiff's Member
23 and Plaintiff Theodore A. Pinnock was discriminated against each
24 time he patronized Defendants' establishments. Plaintiff's Member
25 and Plaintiff Theodore A. Pinnock was extremely upset due to
26 Defendants' conduct. Further, Plaintiff's Member and Plaintiff
27 THEODORE A. PINNOCK experienced pain in his legs, back, arms,
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1 shoulders and wrists when he attempted to enter, use, and exit
2 Defendants' CHILI'S GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO,
3 a.k.a. CHILI'S HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH
4 establishment.

5 WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT

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7 17. CHILI'S GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a.
8 CHILI'S HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO;
9 BRINKER INTERNATIONAL; BRINKER RESTAURANT CORPORATION; CHARMAINE
10 C. WILLIS; and Does 1 through 10 will be referred to collectively
11 hereinafter as "Defendants."

12 18. Plaintiffs aver that the Defendants are liable for the
13 following claims as alleged below:

14
15 DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS

16 FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The
17 Americans With Disabilities Act Of 1990

18
19 CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal
20 Access

21 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
22 this complaint, Plaintiff's Member was denied full and equal
23 access to Defendants' goods, services, facilities, privileges,
24 advantages, or accommodations. Plaintiffs allege Defendants are a
25 public accommodation owned, leased and/or operated by Defendants.
26 Defendants' existing facilities and/or services failed to provide
27 full and equal access to Defendants' facility as required by 42
28 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to

1 discrimination in violation of 42 United States Code
2 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's
3 Member was denied equal access to Defendants' existing facilities.

4 20. Plaintiff's member Theodore A. Pinnock has physical
5 impairments as alleged in ¶ 6 above because his conditions affect
6 one or more of the following body systems: neurological,
7 musculoskeletal, special sense organs, and/or cardiovascular.
8 Further, Plaintiff's member Theodore A. Pinnock's said physical
9 impairments substantially limits one or more of the following
10 major life activities: walking. In addition, Plaintiff's member
11 Theodore A. Pinnock cannot perform one or more of the said major
12 life activities in the manner, speed, and duration when compared
13 to the average person. Moreover, Plaintiff's member Theodore A.
14 Pinnock has a history of or has been classified as having a
15 physical impairment as required by 42 U.S.C. § 12102(2)(A).
16

17 **CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations In**
18 **Such A Manner That The Altered Portions Of The Facility Are**
19 **Readily Accessible And Usable By Individuals With Disabilities**

20 21. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
21 this complaint, Plaintiff's Member Theodore A. Pinnock was denied
22 full and equal access to Defendants' goods, services, facilities,
23 privileges, advantages, or accommodations within a public
24 accommodation owned, leased, and/or operated by Defendants.
25 Defendants altered their facility in a manner that affects or
26 could affect the usability of the facility or a part of the
27 facility after January 26, 1992. In performing the alteration,
28 Defendants failed to make the alteration in such a manner that, to
the maximum extent feasible, the altered portions of the facility

1 are readily accessible to and usable by individuals with
2 disabilities, including individuals who use wheelchairs, in
3 violation of 42 U.S.C. §12183(a)(2).

4 22. Additionally, the Defendants undertook an alteration that
5 affects or could affect the usability of or access to an area of
6 the facility containing a primary function after January 26, 1992.
7 Defendants further failed to make the alterations in such a manner
8 that, to the maximum extent feasible, the path of travel to the
9 altered area and the bathrooms, telephones, and drinking fountains
10 serving the altered area, are readily accessible to and usable by
11 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

12 23. Pursuant to 42 U.S.C. §12183(a), this failure to make the
13 alterations in a manner that, to the maximum extent feasible, are
14 readily accessible to and usable by individuals with disabilities
15 constitutes discrimination for purposes of 42 U.S.C. §12183(a).
16 Therefore, Defendants discriminated against Plaintiff's Member
17 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

18 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to
19 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.
20 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.
21 Pinnock was denied equal access to Defendants' existing
22 facilities.
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24
25 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove
26 Architectural Barriers

27 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
28 this complaint, Plaintiff's Member was denied full and equal

1 access to Defendants' goods, services, facilities, privileges,
2 advantages, or accommodations within a public accommodation owned,
3 leased, and/or operated by Defendants. Defendants failed to
4 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs
5 are informed, believe, and thus allege that architectural barriers
6 which are structural in nature exist within the following physical
7 elements of Defendants' facilities: Space Allowance and Reach
8 Ranges, Accessible Route, Protruding Objects, Ground and Floor
9 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,
10 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,
11 Doors, Entrances, Drinking Fountains and Water Coolers, Water
12 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,
13 Storage, Handrails, Grab Bars, and Controls and Operating
14 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.
15 Title III requires places of public accommodation to remove
16 architectural barriers that are structural in nature to existing
17 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]
18 Failure to remove such barriers and disparate treatment against a
19 person who has a known association with a person with a disability
20 are forms of discrimination. [See 42 United States Code
21 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to
22 discrimination in violation of 42 United States Code
23 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
24 denied equal access to Defendants' existing facilities.
25

26 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,
27 Policies And Procedures

28 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in

1 this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services, as required by 42
6 U.S.C. § 12188(a). Thus, said Member was subjected to
7 discrimination in violation of 42 United States Code
8 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was
9 denied equal access to Defendants' existing facilities.

10 27. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and
11 III of Plaintiffs' First Cause Of Action above, and the facts
12 elsewhere herein this complaint, Plaintiffs will suffer
13 irreparable harm unless Defendants are ordered to remove
14 architectural, non-architectural, and communication barriers at
15 Defendants' public accommodation. Plaintiffs allege that
16 Defendants' discriminatory conduct is capable of repetition, and
17 this discriminatory repetition adversely impacts Plaintiffs and a
18 substantial segment of the disability community. Plaintiffs
19 allege there is a national public interest in requiring
20 accessibility in places of public accommodation. Plaintiffs have
21 no adequate remedy at law to redress the discriminatory conduct of
22 Defendants. Plaintiff's Member desires to return to Defendants'
23 places of business in the immediate future. Accordingly, the
24 Plaintiffs allege that a structural or mandatory injunction is
25 necessary to enjoin compliance with federal civil rights laws
26 enacted for the benefit of individuals with disabilities.

27
28 28. WHEREFORE, Plaintiffs pray for judgment and relief as

1 hereinafter set forth.

2 **SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER**
3 **CALIFORNIA ACCESSIBILITY LAWS**

4 **CLAIM I: Denial Of Full And Equal Access**

5 29. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
6 this complaint, Plaintiff's Member was denied full and equal
7 access to Defendants' goods, services, facilities, privileges,
8 advantages, or accommodations within a public accommodation owned,
9 leased, and/or operated by Defendants as required by Civil Code
10 Sections 54 and 54.1. Defendants' facility violated California's
11 Title 24 Accessible Building Code by failing to provide access to
12 Defendants' facilities due to violations pertaining to the Space
13 Allowance and Reach Ranges, Accessible Route, Protruding Objects,
14 Ground and Floor Surfaces, Parking and Passenger Loading Zones,
15 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair
16 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water
17 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and
18 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and
19 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and
20 Telephones.

21 30. These violations denied Plaintiff's Member full and equal
22 access to Defendants' facility. Thus, said Member was subjected
23 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1
24 because Plaintiff's Member was denied full, equal and safe access
25 to Defendants' facility, causing severe emotional distress.

26 **CLAIM II: Failure To Modify Practices, Policies And Procedures**

27 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere
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1 herein this complaint, Defendants failed and refused to provide a
2 reasonable alternative by modifying its practices, policies, and
3 procedures in that they failed to have a scheme, plan, or design
4 to assist Plaintiff's Member and/or others similarly situated in
5 entering and utilizing Defendants' services as required by Civil
6 Code § 54.1. Thus, said Member was subjected to discrimination in
7 violation of Civil Code § 54.1.

8 **CLAIM III: Violation Of The Unruh Act**

9 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere
10 herein this complaint and because Defendants violated the Civil
11 Code § 51 by failing to comply with 42 United States Code §
12 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and
13 continue to discriminate against Plaintiff's Member and persons
14 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

15 33. Based on the facts plead at ¶¶ 6-17 above, Claims I, II, and
16 III of Plaintiffs' Second Cause Of Action above, and the facts
17 elsewhere herein this complaint, Plaintiffs will suffer
18 irreparable harm unless Defendants are ordered to remove
19 architectural, non-architectural, and communication barriers at
20 Defendants' public accommodation. Plaintiffs allege that
21 Defendants' discriminatory conduct is capable of repetition, and
22 this discriminatory repetition adversely impacts Plaintiffs and a
23 substantial segment of the disability community. Plaintiffs
24 allege there is a state and national public interest in requiring
25 accessibility in places of public accommodation. Plaintiffs have
26 no adequate remedy at law to redress the discriminatory conduct of
27 Defendants. Plaintiff's Member desires to return to Defendants'
28

1 places of business in the immediate future. Accordingly, the
2 Plaintiffs allege that a structural or mandatory injunction is
3 necessary to enjoin compliance with state civil rights laws
4 enacted for the benefit of individuals with disabilities.

5 34. Wherefore, Plaintiffs pray for damages and relief as
6 hereinafter stated.

7 Treble Damages Pursuant To Claims I, II, III Under The California
8 Accessibility Laws

9 35. Defendants, each of them respectively, at times prior to and
10 including, the month of August, 2003, and continuing to the
11 present time, knew that persons with physical disabilities were
12 denied their rights of equal access to all portions of this public
13 facility. Despite such knowledge, Defendants, and each of them,
14 failed and refused to take steps to comply with the applicable
15 access statutes; and despite knowledge of the resulting problems
16 and denial of civil rights thereby suffered by Plaintiff's Member
17 THEODORE A. PINNOCK and other similarly situated persons with
18 disabilities. Defendants, and each of them, have failed and
19 refused to take action to grant full and equal access to persons
20 with physical disabilities in the respects complained of
21 hereinabove. Defendants, and each of them, have carried out a
22 course of conduct of refusing to respond to, or correct complaints
23 about, denial of disabled access and have refused to comply with
24 their legal obligations to make Defendants' CHILI'S GRILL & BAR -
25 CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a. CHILI'S HAMBURGER GRILL
26 AND BAR - CAMINO DEL RIO NORTH, SAN DIEGO facilities accessible
27 pursuant to the Americans With Disability Act Access Guidelines
28 (ADAAG) and Title 24 of the California Code of Regulations (also

1 known as the California Building Code). Such actions and
2 continuing course of conduct by Defendants, and each of them,
3 evidence despicable conduct in conscious disregard of the rights
4 and/or safety of Plaintiff's Member and of other similarly
5 situated persons, justifying an award of treble damages pursuant
6 to sections 52(a) and 54.3(a) of the California Civil Code.

7 36. Defendants', and each of their, actions have also been
8 oppressive to persons with physical disabilities and of other
9 members of the public, and have evidenced actual or implied
10 malicious intent toward those members of the public, such as
11 Plaintiff's Member and other persons with physical disabilities
12 who have been denied the proper access to which they are entitled
13 by law. Further, Defendants', and each of their, refusals on a
14 day-to-day basis to correct these problems evidence despicable
15 conduct in conscious disregard for the rights of Plaintiff's
16 Member THEODORE A. PINNOCK and other members of the public with
17 physical disabilities.

18 37. Plaintiffs pray for an award of treble damages against
19 Defendants, and each of them, pursuant to California Civil Code
20 sections 52(a) and 54.3(a), in an amount sufficient to make a more
21 profound example of Defendants and encourage owners, lessors, and
22 operators of other public facilities from willful disregard of the
23 rights of persons with disabilities. Plaintiffs do not know the
24 financial worth of Defendants, or the amount of damages sufficient
25 to accomplish the public purposes of section 52(a) of the
26 California Civil Code and section 54.3 of the California Civil
27 Code.
28

1 38. Wherefore, Plaintiffs pray for damages and relief as
2 hereinafter stated.

3 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL
4 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

5 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in
6 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a
7 statutory duty to make their facility accessible and owed
8 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.
9 Pinnock reasonably safe from known dangers and risks of harm.
10 This said duty arises by virtue of legal duties proscribed by
11 various federal and state statutes including, but not limited to,
12 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the
13 California Administrative Code and applicable 1982 Uniform
14 Building Code standards as amended.

15 40. Title III of the ADA mandates removal of architectural
16 barriers and prohibits disability discrimination. As well,
17 Defendants' facility, and other goods, services, and/or facilities
18 provided to the public by Defendants are not accessible to and
19 usable by persons with disabilities as required by Health and
20 Safety Code § 19955 which requires private entities to make their
21 facility accessible before and after remodeling, and to remove
22 architectural barriers.

23 41. Therefore, Defendants engaged in discriminatory conduct in
24 that they failed to comply with known duties under the ADA, ADAAG,
25 Civil Code 51, 52, 54, 54.1, 54.3, ADAAG, and Title 24, and knew
26 or should have known that their acts of nonfeasance would cause
27 Plaintiff THEODORE A. PINNOCK emotional, bodily and personal
28

1 injury. Plaintiff THEODORE A. PINNOCK alleges that there was
2 bodily injury in this matter because when Plaintiff THEODORE A.
3 PINNOCK attempted to enter, use, and exit Defendants'
4 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in
5 his legs, back, arms, shoulders, and wrists. Plaintiffs further
6 allege that such conduct was done in reckless disregard of the
7 probability of said conduct causing Plaintiff THEODORE A. PINNOCK
8 to suffer bodily or personal injury, anger, embarrassment,
9 depression, anxiety, mortification, humiliation, distress, and
10 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
11 Individual, alleges that such conduct caused THEODORE A. PINNOCK,
12 An Individual, to suffer the injuries of mental and emotional
13 distress, including, but not limited to, anger, embarrassment,
14 depression, anxiety, mortification, humiliation, distress, and
15 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An
16 Individual, additionally alleges that such conduct caused THEODORE
17 A. PINNOCK, An Individual, to suffer damages as a result of these
18 injuries.

19
20 42. Wherefore, Plaintiffs pray for damages and relief as
21 hereinafter stated.

22 DEMAND FOR JUDGMENT FOR RELIEF:

- 23 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,
24 3281, and 3333;
25 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for
26 each and every offense of Civil Code § 51, Title 24 of the
27 California Building Code, ADA, and ADA Accessibility Guidelines;
28 C. In the alternative to the damages pursuant to Cal. Civil

1 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to
2 Cal. Civil Code § 54.3 for each and every offense of Civil Code §
3 54.1, Title 24 of the California Building Code, ADA, and ADA
4 Accessibility Guidelines;

5 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and
6 Cal. Civil Code § 55. Plaintiffs request this Court enjoin
7 Defendants to remove all architectural barriers in, at, or on
8 their facilities related to the following: Space Allowance and
9 Reach Ranges, Accessible Route, Protruding Objects, Ground and
10 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,
11 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),
12 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,
13 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,
14 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating
15 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

16 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.
17 § 12205, and Cal. Civil Code § 55;

18 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),
19 and 54.3(a);

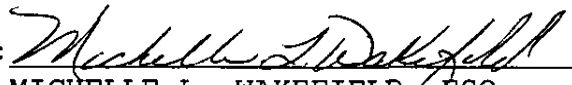
20 G. A Jury Trial and;

21 H. For such other further relief as the court deems proper.

22 Respectfully submitted:

23 PINNOCK & WAKEFIELD

24
25 Dated: December 11, 2003

26 By: 
27 MICHELLE L. WAKEFIELD, ESQ.
28 DAVID C. WAKEFIELD, ESQ.
Attorneys for Plaintiffs

CIVIL COVER SHEET

(Rev. 07/89)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by the court, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

FILED

DEC 12 2003

I (a) PLAINTIFFS
MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF
THEODORE A. PINNOCK AND ITS MEMBERS; And
THEODORE A. PINNOCK, An Individual

DEFENDANTS
CHILI'S GRILL & BAR - CAMINO DEL RIO NORTH, SAN DIEGO, a.k.a.
CHILI'S HAMBURGER GRILL AND BAR - CAMINO DEL RIO NORTH, SAN
DIEGO; BRINKER INTERNATIONAL; BRINKER RESTAURANT CORPORATION;
CHARMAINE C. WILLIS; And DOES 1 THROUGH 10, Inclusive

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego DEPUTY
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
Michelle L. Wakefield, Esq. SBN: 200424
David C. Wakefield, Esq. SBN: 185736
Pinnock & Wakefield; 3033 Fifth Avenue, Suite 410
San Diego, CA 92103
Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)

'03 CV 2502 L (LSP)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- 1 U.S. Government Plaintiff
- 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant
- 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | |
|---|--|---|
| | PT DEF | PT DEF |
| Citizen of This State | <input type="checkbox"/> 1 Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation | <input type="checkbox"/> 6 <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 180 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/CC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input checked="" type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prisoner Conditions			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- 1 Original Proceeding
- 2 Removal from State Court
- 3 Remanded from Appellate Court
- 4 Reinstated or Reopened
- 5 Transferred from another district (specify)
- 6 Multidistrict Litigation
- 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23

DEMAND \$

To Be Determined At Trial

Check YES only if demanded in complaint:

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE December 11, 2003

SIGNATURE OF ATTORNEY OF RECORD

Michelle L. Wakefield

Pl. #100110 12/15/03 #99495 VB